

JANET TUNG  
 California State Bar No. 231682  
 FEDERAL DEFENDERS OF SAN DIEGO, INC.  
 225 Broadway, Suite 900  
 San Diego, CA 92101-5008  
 Telephone: (619) 234-8467  
 Email: Janet\_Tung@fd.org  
 Attorneys for JAMES DEWAYNE MCPHERSON

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA  
 (HONORABLE JANIS L. SAMMARTINO)

JAMES DEWAYNE MCPHERSON,	)	Civil Action No. 08CV0032-JLS
	)	Criminal No. 89CR0940-JLS
	)	
Petitioner,	)	
	)	<b>PETITIONER'S REPLY</b>
v.	)	
	)	
UNITED STATES,	)	
	)	
Respondent.	)	

INTRODUCTION

James McPherson was a young black man with two small daughters when he was sentenced to 262 months in federal prison. Mr. McPherson was convicted of involvement in a street-level crack retailing operation that was busted in 1989 with 1.3 kg of crack and various firearms. He was twenty-four years old then. At the time, the base offense level under the Sentencing Guidelines for that amount of crack was 36, based on a graduated scheme calibrated to the mandatory minimums set forth by statute. The Guideline ranges for threshold quantities were set so that the low end of the range would be above the statutory minimum penalties. The resulting ranges were set by the Sentencing Commission to correspond to the 100-to-1 ratio between crack and powder cocaine sentencing statutes.

1 Eighteen years have passed. Mr. McPherson is now forty-two. He is still in prison; his daughters  
 2 are in college. And while Mr. McPherson was serving his time, the Sentencing Commission developed and  
 3 reformed its view on crack sentencing. After collecting data and conducting research over the past two  
 4 decades or so, the Sentencing Commission concluded that the Guideline scheme based on the 100-to-1 ratio  
 5 was too harsh. The ranges it generated “fail[ed] to meet the sentencing objectives set forth by Congress.”  
 6 Kimbrough v. United States, 128 S. Ct. 558, 568 (2007). In response, the Commission amended the  
 7 Guidelines to reduce the disparity between crack and powder cocaine, shifting the scheme downwards, and  
 8 made those amendments retroactive. See U.S.S.G. § 1B1.10(c); U.S.S.G. Appx C, amend. 706. The new  
 9 base offense level for 1.3 kg of crack is now 34. These changes enable a court to fix the lengthy sentences  
 10 under the former Guidelines that, like Mr. McPherson’s, are “inconsistent with [Congress’s] goal of  
 11 punishing major drug traffickers more severely than low-level dealers,” and which “foster[] disrespect for  
 12 and lack of confidence in the criminal justice system” because they “promote[] unwarranted disparity based  
 13 on race.” See Kimbrough, 128 S. Ct. at 568.

14 Mr. McPherson is the person the retroactive crack amendments were designed to help: the “black  
 15 offender” whose “severe sentence[] required by the 100-to-1 ratio” under the old guidelines produced the  
 16 “anomalous result that retail crack dealers get longer sentences than the wholesale drug distributors who  
 17 supply them the powder cocaine.” Id. at 568 (quotation marks omitted). He has already served well over  
 18 the 210-month sentence that a two-level deduction would generate under the amendments. Because  
 19 Mr. McPherson is scheduled for release on October 31, 2008, the full 52-month benefit under the  
 20 amendments is no longer available to him. He therefore asks only that this Court order his sentence  
 21 modified to **time served, effective immediately**. As time is of the essence, Mr. McPherson respectfully  
 22 requests this Court to rule on his motion expeditiously.

## 23 ARGUMENT

### 24 I.

#### 25 THE RETROACTIVE AMENDMENTS ARE PRESUMPTIVELY 26 APPLICABLE TO MR. MCPHERSON

27 Mr. McPherson is eligible to be resentenced under the amended Guidelines, see 18 U.S.C.  
 28 § 3582(c)(2); U.S.S.G. § 1B1.10(c) (amend. Mar. 3, 2008) (listing Amendment 706); the government agrees.

See Opp. at 4-5. The parties also agree that, applying the amended Guideline, U.S.S.G. § 2D1.1, would reduce Mr. McPherson's adjusted offense level from 38 to 36. At Criminal History Category II, the sentencing range would go down from 262-327 months to 210-262 months. Mr. McPherson was originally sentenced to the low end of the range, 262 months; under the amended Guidelines, he would have gotten 210 months—about four and a half years less time. Mr. McPherson has already completed almost his entire 262-month sentence. He is due to be released on October 31, about six months from now. Because he falls squarely within the “mine run of cases” contemplated by the Commission when it sought to mitigate the unfair consequences of the old crack guidelines, see Rita v. United States, 127 S. Ct. 2456, 2465 (2007), and he has substantial evidence of rehabilitation and good prospects upon release, see 18 U.S.C. § 3553(a), this Court should exercise its discretion to grant Mr. McPherson a sentence reduction to time served.

**A. The Sentencing Commission's Reasons For Amending § 2D1.1 Apply to Mr. McPherson**

The Sentencing Commission, in carrying out its “important institutional role” of refining national sentencing standards, see Kimbrough, 128 S. Ct. at 574, determined that the former Guidelines yielded sentences so unjustifiably severe for crack offenses that they “undermine[d] various congressional objectives set forth in the Sentencing Reform Act and elsewhere.” U.S.S.G. amend. 706 (Nov. 1, 2007). Crack cocaine offenses, under the 100-to-1 ratio implemented by the old Guideline, are “three to six times longer than those for powder offenses involving equal amounts of drugs.” Kimbrough, 128 S. Ct. at 566. This is true here: if Mr. McPherson's offense involved 1.3 kg of powder cocaine instead of crack, his low-end sentence would have been 87 months<sup>1</sup>—three times less than the 262-month sentence he actually received. Indeed, if the crime involved powder, Mr. McPherson would have to have possessed somewhere between 50 and 150 kilograms, or at least as much cocaine as the weight of an adult person, to trigger the same Guideline range. Someone with that much powder cocaine, as the Supreme Court has recognized, would be much higher up on the distribution chain than Mr. McPherson's street-level operation. See Kimbrough, 128 S. Ct. at 568 (“[T]he crack/powder disparity is inconsistent with the [Anti-Drug Abuse Act of 1986's] goal of punishing major drug traffickers more severely than low-level dealers. Drug importers and major traffickers generally

---

<sup>1</sup>The calculation is as follows: 1.3 kg of powder cocaine yields a base offense level of 26 under § 2D1.1; applying the same adjustments results in offense level 28. At Criminal History Category II, the range is 87-108 months.

1 deal in powder cocaine, which is then converted into crack by street-level sellers.”).

2 In short, the Commission recognized it needed to fix the Guidelines because its “penalties overstate  
3 the seriousness of the crack cocaine offenses and fail to provide adequate proportionality.” United States  
4 Sentencing Commission, Report to Congress: Cocaine and Federal Sentencing Policy (May 2007), at 8,  
5 available at [http://www.ussc.gov/r\\_congress/cocaine2007.pdf](http://www.ussc.gov/r_congress/cocaine2007.pdf) [hereafter “May 2007 USSC Report”]. This  
6 problem was compounded by the “unwarranted disparity based on race” caused by the “crack/powder  
7 sentencing differential,” which imposes its most severe sentences “primarily upon black offenders”—as is  
8 the case with Mr. McPherson. See Kimbrough, 128 S. Ct. at 568 (quotation marks omitted).

9 As a temporary fix, the Commission shifted the crack sentencing scheme downwards: “crack cocaine  
10 quantities above and below the mandatory minimum threshold quantities will be adjusted downward by two  
11 levels.” Id. at 9 (describing the effect of Amendment 706).<sup>2</sup> This was only a “partial remedy” to the  
12 “problems associated with the 100-to-1 drug quantity ratio . . . so urgent and compelling” they warranted  
13 immediate and retroactive amendment of the Guidelines; the Commission also urged Congress to take  
14 action. See U.S.S.G. amend. 706. Most of the benefit of these sentencing reforms are, however, no longer  
15 available to Mr. McPherson. Under the reformed view taken by the amendment, which only “partial[ly]”  
16 mitigates the unfair severity of crack sentences, Mr. McPherson would have been sentenced to 52 months  
17 less time in custody (comparing the low end sentences of 262 and 210 months). Calculating backwards from  
18 his October release date, under the Commission’s reformed view of crack sentencing, Mr. McPherson has  
19 already spent four years too many in prison.

20 **B. Just as Mr. McPherson Was Originally Sentenced to the Low End of the Former Guidelines**  
21 **Range, the Low End of the Amended Guidelines Range Is the Appropriate Sentence Now**

22 Absent evidence to the contrary, the “fundamental” change in “philosophy and statistical assessment”  
23 that the crack amendment represents should be applied to Mr. McPherson to allow him what little benefit  
24

---

25 <sup>2</sup>The Commission concluded that the “manner in which the Drug Quantity Table in § 2D1.1 . . . was  
26 constructed to incorporate the statutory mandatory minimum penalties for crack cocaine offenses is an area  
27 in which the Federal sentencing guidelines contribute to the problems associated with the 100-to-1 drug  
28 quantity ratio.” U.S.S.G. amend. 706. The problems were due to drug quantity thresholds that were set so  
the bottom of the range was “above the statutory mandatory minimum penalties”; Amendment 706 modified  
the ranges and offense levels so the ranges “include the statutory mandatory minimum penalties.” Id.

1 remains before he completes his original sentence. See United States v. Schroeder, No. 06CR00029, 2008  
 2 WL 648030, at \*1 (W.D. Va. March 7, 2008) (unpublished); cf. U.S.S.G. § 1B1.10, background cmt.  
 3 (inclusion of an amendment in the list of retroactive provisions “reflects policy determinations by the  
 4 Commission that a reduced guideline range is sufficient to achieve the purposes of sentencing”). Numerous  
 5 courts all over the country have reduced low-end crack sentences to the low end of the amended range, and  
 6 this Court would be on sound precedential footing to do the same.<sup>3</sup>

7 A reduction is particularly appropriate here. At Mr. McPherson’s sentencing in 1991, Judge Rhoades  
 8 settled on a sentence at the low end of the then-mandatory Guidelines range. The record shows that he  
 9 regarded even that sentence to be too long, but relied heavily on the judgment of the Sentencing Commission  
 10 to sentence Mr. McPherson to the low end of the range. See Sentencing Transcript at 24 (attached as Exhibit  
 11 2 to the Opposition) (observing that 262 months “is a long time when he only gets 15 percent off of that  
 12 time. So he is looking at a long, long time. . . . Congress reflecting, I guess, the will of the people, ha[s]  
 13 decided that this is what it should be. So that would appear to be what it should be, 262 months.”). Just as  
 14 Judge Rhoades deferred to the Commission’s judgment at Mr. McPherson’s original sentencing, this Court  
 15 should again apply the same deference to the Commission’s judgment in reducing the applicable range.  
 16 Because Mr. McPherson’s sentence cannot be reduced to 210 months, as he has already served more than

---

17  
 18 <sup>3</sup>See, e.g., United States v. Nigatu, Crim. No. 00-18 (PAM), 2008 WL 926561 (D. Minn. April 7,  
 19 2008) (unpublished) (reducing 108-month sentence, the low end of the 108-135-month guideline range, to  
 20 87 months, the low end of the 87-108 month range resulting from the two-level offense level reduction);  
 21 Schroeder, 2008 WL 648030, at \*1-2 (reducing the sentence to the low end of the range reached by applying  
 22 the 2-level reduction under the amended Guidelines and holding all other things equal); United States v.  
 23 Smith, No. 06-60138-CR, 2008 WL 906774 (S.D. Fla. April 3, 2008) (unpublished) (same; reducing 70-  
 24 month sentence to 57 months); United States v. Donaldson, No. 00-cr-37-FTM-29DNF, 2008 WL 818609  
 25 (M.D. Fla. Mar. 25, 2008) (unpublished) (same; reducing 168-month sentence to 136 months); United States  
 26 v. Rubick, No. 03-CR-111, 2008 WL 833510 (E.D. Tenn. Mar. 26, 2008) (same; reducing 63-month  
 27 sentence to 78 months); United States v. Greimann, No. CR05-3005-LRR, 2008 WL 747176 (N.D. Iowa  
 28 Mar. 18, 2008) (same; reducing 51-month sentence to 46 months); United States v. Marquez, No. 02-CR-77-  
 01-PB, 2008 WL 638251 (D.N.H. Mar. 5, 2006) (same; reducing 70-month sentence to 57 months); United  
States v. Williams, No. 03-CR-96-FTM-29DNF, 2008 WL 660301 (M.D. Fla. Mar. 6, 2008) (same; reducing  
 292-month sentence to 235 months). Accord United States v. Diaz, No. CR-02-1327-CPS, 2008 WL  
 789885 (E.D.N.Y. Mar. 20, 2008) (reducing 84-month sentence, 26% of the low end of the original range,  
 to 60 months, 26% of the low end of the newly calculate range); United States v. Williams, No. 05-CR-274,  
 2008 WL 925125 (E.D.N.Y. Mar. 14, 2008) (reducing 21-month sentence on crack charge to 17 months,  
 where the original sentence reflected a substantial downward departure, reasoning that “a reduction  
 comparably less than the amended guideline range” was appropriate).

that, this Court should amend his sentence to time served, and order that his supervised release term be informal and “unsupervised” to compensate him for the four years of extra time he has already served.

## II.

### THE SECTION 3553(a) FACTORS FAVOR IMMEDIATE RESENTENCING TO TIME SERVED

Consideration of the sentencing factors set forth in 18 U.S.C. § 3553(a), the second step of the Court’s analysis here, favors granting Mr. McPherson’s motion for reduction. See 18 U.S.C. § 3582(c)(2) (“the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable”). The reasoned judgment of the Sentencing Commission in amending the Guidelines, Mr. McPherson’s demonstrated record of rehabilitation in custody, and his strong prospects for successful readjustment all line up in favor of granting a reduction. The government’s arguments to the contrary rely erroneously on offense conduct that was already taken into account at the time of sentencing, and do not contribute to the § 3582 analysis.

#### A. The Nature and Circumstances of the Offense

The § 3553 factors weigh in Mr. McPherson’s favor. First, the circumstances of the offense were fully accounted for in the Guidelines calculations at sentencing, and, moreover, reflect the prototype offender the Sentencing Commission felt was treated with unfair severity. Mr. McPherson convicted of possessing and conspiring to possess 1.3 kg of crack cocaine with the intent to distribute, a quantity that was accounted for in the calculation of the Guideline range. See Opp. Exh. 2 at 22 (calculating base offense level of 36). Firearms were found on the premises, and resulted in a two-level enhancement to Mr. McPherson’s offense level, adding 52 months to the low-end sentence. See id. The nature and circumstances of the offense show that Mr. McPherson was a “street-level” player, not one of the “[d]rug importers and major traffickers” higher up on the distribution chain. See Kimbrough, 128 S. Ct. at 568. His sentence therefore exemplifies the crack/powder disparity that the Sentencing Commission’s amendment was targeted to ameliorate. See id. (the 100-to-1 ratio creates the perverse result of punishing low-level dealers more severely than major drug traffickers).

The government’s arguments that drug quantity and the fact of the firearm enhancement preclude a § 3582 reduction, see Opp. at 7-10, make no sense. If drug quantity alone were a reason to deny

1 Mr. McPherson a reduced sentence under the amended Guidelines, the Sentencing Commission would never  
2 have amended the sentencing range for the quantity at issue. See Schroeder, 2008 WL 648030, at \*1  
3 (overruling the government's objection to the sentence reduction on the basis of the large quantity of crack  
4 cocaine and the defendant's criminal history because these factors were already "taken into consideration  
5 when the court originally sentenced the defendant"). The same is true of the firearm enhancement, the most  
6 common aggravating factor in crack offenses, which is present in approximately 25% of crack convictions.  
7 See May 2007 USSC Report, at 32-35. The firearms, moreover, have already been accounted for in the 2-  
8 level enhancement to Mr. McPherson's offense level. See Rubick, 2008 WL 833510, at \*1 (rejecting the  
9 government's argument because the firearms had been accounted for at sentencing "and it is not necessary  
10 to further punish the defendant for possession of the firearms by denying him the benefit of the new crack  
11 cocaine guidelines").

12 **B. The History and Characteristics of the Defendant**

13 Mr. McPherson is not the same man who was convicted of the crack offenses in 1989. For starters,  
14 Mr. McPherson is now 41 years old; he is no longer a young man in his early twenties. His children,  
15 Shadaria and Karya, just eighteen months and three months old when he went into custody, have now  
16 graduated from high school. They are in college now, and Karya is studying to be a pediatrician. In the past  
17 eighteen years he has spent in prison, Mr. McPherson has missed their high school graduations, the trials  
18 of adolescence, discoveries of childhood, and even Karya's first steps and first words. Had he been  
19 sentenced to 210 months under the Guidelines applicable now, he would have been back in their lives four  
20 years ago, when Shadaria was 16 and Karya was 14. Mr. McPherson has been away from his family for too  
21 long already.

22 The past eighteen years in custody has had a strong rehabilitative effect. Mr. McPherson has made  
23 serious efforts to advance his education. He attended Taft College, graduating in 2003 with an Associate's  
24 degree in General Business, and making the President's List for two semesters in a row, an honor reserved  
25 for the top fifty students. See Appendix A. At Taft, Mr. McPherson successfully completed courses in Real  
26 Estate, Real Estate Finance, Microsoft Excel, and Basic Commodities. See Appendix B. Mr. McPherson  
27 has also taken numerous other self-betterment courses in custody, including classes in conflict resolution,  
28 self reflection, HIV/AIDS education, and drug education. See Appendix C (certificates spanning 1998 to

2008). Mr. McPherson has been employed, working for eight years as a warehouse worker, twice receiving certificates of outstanding performance, and now works in the recreational facility. See Appendix D. He has become a Muslim, and plans to join a mosque when released. Mr. McPherson's record in custody demonstrates a strong likelihood of successful readjustment to the community.

**C. Other Relevant Sentencing Concerns**

As discussed above, the careful analysis and consideration of the § 3553(a)(2) factors by the Sentencing Commission in retroactively amending § 2D1.1 are applicable with full force to Mr. McPherson. The eighteen years he has already served have been more than enough to "reflect the seriousness of the offense, . . . promote respect for the law, and . . . provide just punishment" and deterrence. See 18 U.S.C. § 3553(a)(2)(A)-(C). There is no educational or medical reason to keep Mr. McPherson in custody. See id. at § 3553(a)(2)(D). The need to avoid unwarranted disparities between Mr. McPherson and defendants being sentenced under the new Guidelines also favors the reduction. See 18 U.S.C. § 3553(a)(6). There is nothing to suggest that Mr. McPherson's case lies outside the heartland of cases the Sentencing Commission had in mind when it promulgated the retroactive amendments.

Moreover, Mr. McPherson's prospects upon release are strong. He will live in San Diego with Koryn Harris, his girlfriend of twenty years, and their daughter Karya. His parents live nearby in the Los Angeles area and are supportive. Mr. McPherson is well-equipped with skills he will need to find employment in the real estate and finance fields, and is highly unlikely to reoffend. There is no indication that he suffers from drug addiction or posed a serious disciplinary problem in custody. Mr. McPherson's good behavior strongly militates in favor of ordering his immediate release. See, e.g., Williams, 2008 WL 921525, at \*4-5 (finding that the defendant, who, while in prison, had obtained his GED, taken courses in business and film, and completed a drug abuse treatment program, and incurred only two minor disciplinary infractions, had "taken charge of his life in prison and has rehabilitated himself"; observing that "[i]t is unlikely that he will engage in criminal activity again"); see also Diaz, 2008 WL 789885, at \*4 (ordering immediate release of crack offender who had demonstrated efforts at self-improvement and generally good conduct).

A reasoned and just application of the § 3553(a) factors and the judgment of the Sentencing Commission counsels that Mr. McPherson be resentenced to time served to be followed by five years of "unsupervised" supervised release. As he has only six months left to serve, modifying the terms of his

1 supervised release to remove the reporting and notification requirements is appropriate to account for the  
2 fact that he has already served at least four years more in prison than he would have under a 210 month  
3 sentence. Mr. McPherson respectfully requests that this Court grant his motion expeditiously and issue an  
4 order to the Bureau of Prisons directing his immediate release.

5 **IV.**

6 **CONCLUSION**

7 For the foregoing reasons, and as set forth in his Motion, Mr. McPherson respectfully requests  
8 that this Court resentence him forthwith to time served, to be followed by five years of “unsupervised”  
9 supervised release.

10  
11 Respectfully Submitted,

12 */s/ Janet C. Tung*

13 DATED: April 22, 2008

14 **JANET C. TUNG**  
Federal Defenders of San Diego, Inc.  
Attorneys for Mr. McPherson  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## **APPENDIX A**



March 28, 2002

James McPherson  
P.O. Box 7001  
Taft, CA 93268

Dear James:

Because of your academic achievements, you are an honor member of the President's List for the Fall Semester 2001. Your grade point average as a full-time student places you in the top 50 students attending Taft College. You have met the criteria of carrying 12 or more units with a GPA of 3.5 or better and with no grade lower than a "B." This is not an easy task, requiring both a good mind and hard work to achieve.

The Board of Trustees and the entire faculty and staff appreciate your good efforts and want you to know how much we enjoy working with good students such as you.

We wish you great success in the semesters ahead!

Sincerely,

A handwritten signature in black ink, appearing to read "D. Roe Darnell".

D. Roe Darnell, Ed. D.  
Superintendent/President

# Taft College

Extended Opportunity Programs and Services/  
Cooperative Agencies Resources for Education

## *Certificate of Excellence*

is hereby awarded to

*James D. McPherson*

for

Fall 2001 President's List

*[Signature]*  
EOPS/CARE Coordinator

*[Signature]*  
Dean of Student Services



September 11, 2002

James McPherson  
P. O. Box 7001  
Taft CA 93268

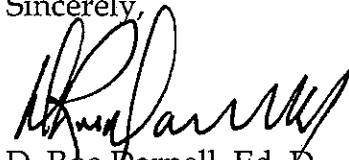
Dear James:

Because of your academic achievements, you are an honor member of the President's List for the Spring 2002. Your grade point average as a full-time student places you in the top 50 students attending Taft College. You have met the criteria of carrying 12 or more units with a GPA of 3.5 or better and with no grade lower than a "B." This is not an easy task, requiring both a good mind and hard work to achieve.

The Board of Trustees and the entire faculty and staff appreciate your good efforts and want you to know how much we enjoy working with good students such as you.

We wish you great success in the semesters ahead!

Sincerely,



D. Roe Darnell, Ed. D.  
Superintendent/President

## **APPENDIX B**

T.C.I. CERTIFICATE OF  
ACHIEVEMENT

*Presented To*

Marzuq Shariff Muhammad

(James D. McPherson)

*In Recognition of Completion of*

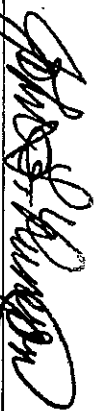
*Deed Estate*

January 27, 2001

A. Santos, Instructor



John F. Runyon, Education Director



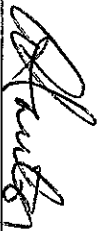
# T.C.I. CERTIFICATE OF ACHIEVEMENT

*Presented To*

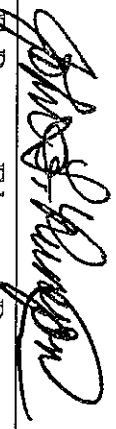
James M<sup>c</sup>Pherson

*In Recognition of Completion of  
Real Estate: Finance*

April 1, 2001



A. Santos, Instructor



John K. Runyon, Education Director

# Certificate of Completion

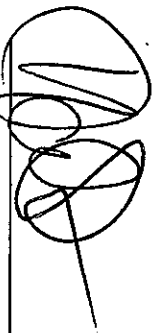
Presented to

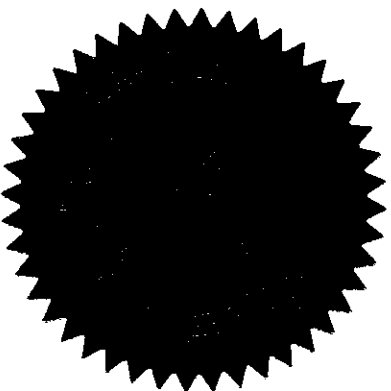
*James Mcpherson*

For Successful Completion of the Watt College Computer Science Course

Microsoft Excel 2000

On This The 24th Day of July, 2001

  
Dale Patrick, Watt College Instructor



WCC/T.C.I. EDUCATIONAL SERVICES  
CERTIFICATE OF COMPLETION

*Presented To*

James D. McPherson

*In Recognition for*

*Basic Commodities*

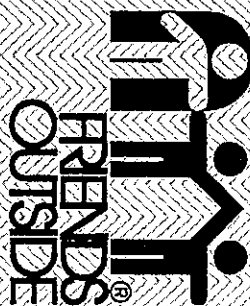
On This Twenty-Third Day of April, Year Two Thousand and Two  
Talt, California

*D. Heberman*  
D. Heberman, LM Instructor

*L. Henley*  
L. Henley, Camp Education

## **APPENDIX C**

# Friends Outside National Organization



## Creative Conflict Resolutions Certificate

*Marzug Sharif Muhammad (James McPherson)*  
has satisfactorily completed the Basic Course in Nonviolent Conflict Resolutions

*Heather Henry*  
Lead Facilitator

*Toss Lee*  
Co-Facilitator

*Judy Evans*  
Judy Evans, Executive Director  
Friends Outside National Organization

*November 8, 1998*  
Date

# ***CERTIFICATE OF COMPLETION***

**This certifies that**

**JAMES MCPHERSON**

**has successfully completed 8 hours of  
“THE MAN IN THE MIRROR”**

**Social Group**

**On this 4th Day of August, 1998**



**Sharon D. Boyd  
Correctional Counselor**



CERTIFICATE OF

# ACHIEVEMENT

THIS AWARD IS PRESENTED TO

*James McPherson*

IN RECOGNITION OF DISTINGUISHED ACHIEVEMENT FOR

*"Name In The Minch"*

*8 Hour Program*

PRESENTED AT *GED, Terminal Island, Cal*

THIS *7th* DAY OF *April* *1998*

*AK*

SIGNATURE

*AK*

*Correctional Counselor*

ORGANIZATION

# FCI Terminal Island

*This certifies that*

*Marzuq Shariff Mohammad*

*James McPherson*

*has successfully completed the  
10 Hour Basic HIV/AIDS Education Program*

*February 24, 1999*

*Theresa Bush, HIV/AIDS Instructor*

*Katy Coulson, Volunteer Coordinator*

*FCI Terminal Island*

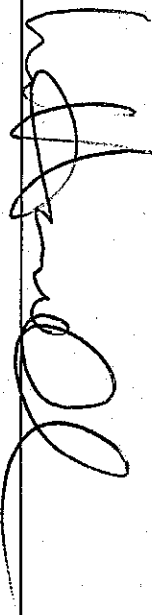
**FEDERAL BUREAU OF PRISONS  
F.C.I. - TERMINAL ISLAND,  
CALIFORNIA**

**JAMES MCPHEARSON ~ 19695-**

**SUCCESSFULLY COMPLETED THE**

**DRUG EDUCATION CLASS**

**ON JANUARY 17, 2008**



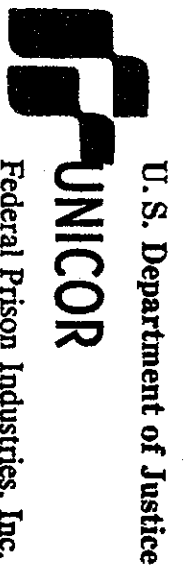
L. HOWELL, RN, USPHS  
DRUG ABUSE TREATMENT SPECIALIST





DR. H. IHLE, COORDINATOR  
DRUG ABUSE PROGRAMS

## **APPENDIX D**



## Outstanding Performance Certificate

**AWARDED TO**

JAMES MCPHERSON

**FOR**

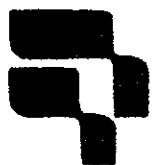
ESTABLISHING AND ATTAINING GOALS WHICH REFLECT  
PRIDE IN WORKMANSHIP. THIS ACHIEVEMENT EXHIBITS  
THE DEDICATION REQUIRED FOR ACCOMPLISHMENT OF  
ASSIGNED DUTIES IN A TRULY PROFESSIONAL MANNER.

Awarded this 1 day of OCTOBER, 19 99 For the month of SEPTEMBER 99

*Pride in Workmanship . . . 'The Golden Gate to Perfection'*

Supervisor

Superintendent of Industries



U. S. Department of Justice  
**UNICOR**  
Federal Prison Industries, Inc.

## Outstanding Performance Certificate

**AWARDED TO**

JAMES MCPHERSON

**FOR**

ESTABLISHING AND ATTAINING GOALS WHICH REFLECT  
PRIDE IN WORKMANSHIP. THIS ACHIEVEMENT EXHIBITS  
THE DEDICATION REQUIRED FOR ACCOMPLISHMENT OF  
ASSIGNED DUTIES IN A TRULY PROFESSIONAL MANNER.

Awarded this 1 day of JANUARY, 19 99 For the month of DECEMBER

*Pride in Workmanship . . . 'The Golden Gate to Perfection'*

  
Supervisor

  
Superintendent of Industries

**CERTIFICATE OF SERVICE**

Counsel for Defendant certifies that the foregoing is true and accurate to the best information and belief, and that a copy of the foregoing document has been caused to be delivered this day upon:

Courtesy Copy to Chambers

Copy to Assistant U.S. Attorney via ECF NEF

Copy to Petitioner

Dated: April 22, 2008

/s/ JANET TUNG

Federal Defenders of San Diego, Inc.  
225 Broadway, Suite 900  
San Diego, CA 92101-5030  
(619) 234-8467 (tel)  
(619) 687-2666 (fax)  
Janet\_Tung@fd.org (email)